

Members

Rep. John Bartlett
Rep. John Barnes
Rep. Robert Behning
Rep. Ralph Foley
Sen. Travis Holdman
Sen. Michael Delph
Sen. James Arnold
Sen. Greg Taylor
Scott Chinn
Jon Laramore
Hon. John G. Baker
Mike McMahon
Jerry Bonnet
Richard Bramer
Anita Samuel



CODE REVISION COMMISSION

Legislative Services Agency
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LSA Staff:

John Stieff, Attorney for the Commission

Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: September 29, 2010
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington
St., Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. John Bartlett; Sen. Travis Holdman; Sen. Michael Delph;
Sen. Greg Taylor; Scott Chinn; Jon Laramore; Mike McMahon;
Jerry Bonnet; Richard Bramer; Anita Samuel.

Members Absent: Rep. John Barnes; Rep. Robert Behning; Rep. Ralph Foley;
Sen. James Arnold; Hon. John G. Baker.

Staff Present: Mr. John Stieff, Director, Office of Code Revision, Legislative
Services Agency; Mr. George Angelone, Deputy Director, Office
of Bill Drafting and Research; Mr. Bob Rudolph, Senior Staff
Attorney, Office of Bill Drafting and Research; Mr. Craig Mortell,
Deputy Director, Office of Code Revision; Mr. John Kline,
Attorney, Office of Code Revision; Mr. Dick Sheets, Editorial
Assistant, Office of Code Revision; Mr. Michael Mullins,
Editorial Assistant, Office of Code Revision.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

I. CALL TO ORDER

The meeting was called to order at 1:35 p.m. by Representative John Bartlett.

II. ELECTION OF CHAIR

A motion was made and seconded to nominate Senator Travis Holdman to be the new Chairman of the Code Revision Commission. Senator Holdman was elected Chairman by consent.

III. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on December 7, 2009, and there were no questions or revisions. The Commission approved the minutes by consent.

IV. INTRODUCTION AND BRIEF DISCUSSION OF NONCODE STATUTES

Mr. John Stieff, Director of the Office of Code Revision, made a few introductory remarks and explained a continuing project dealing with noncode issues for discussion by the Commission. Mr. Stieff gave a brief explanation of noncode statutes. Mr. Jon Laramore commented that the placement of law in noncode or the Indiana Code by a bill presented during a legislative session is decided by the General Assembly and not by the Legislative Services Agency (LSA).

V. LOCAL OPTION INCOME TAX ADOPTION DATES

Mr. George Angelone, Deputy Director of the Office of Bill Drafting and Research, presented a matter assigned to the Code Revision Commission in the 2010 legislative session by HEA 1086. Mr. Angelone stated that HEA 1086-2010, SECTION 179 directed that "the legislative council, with the assistance of the code revision commission, shall provide for the preparation of corrective legislation for introduction in the 2011 session of the general assembly to make changes to IC 6-3.5-1.1, IC 6-3.5-6, and IC 6-3.5-7, as necessary or appropriate, to reflect the changes made by IC 6-3.5-1.1-1.5, IC 6-3.5-6-1.5, and IC 6-3.5-7-4.9, all as added by this act". Mr. Angelone described PD 3060, including proposed legislation for local option income tax adoption dates, that conforms references to ordinance adoption dates in the local income tax laws to the dates specified in P.L.113-2010, SECTIONS 61, 63, and 66.

A motion was made to have the Code Revision Commission's approval to have PD 3060 prepared for introduction, and the motion was approved by consent. At Mr. Stieff's request, the Commission authorized the inclusion in the digest of the bill the following statement: "The introduced version of this bill was prepared by the Code Revision Commission."

VI. DISCUSSION OF TECHNICAL CORRECTIONS BILL

Craig Mortell, deputy director of the Office of Code Revision (OCR), then discussed the 2011 technical corrections (TC) bill draft. He made the following points:

Of the two drafts before the Commission, PD 3080 is the main draft and PD 3315 merely addresses five matters that came to OCR's attention after PD 3080 was prepared. The printed outlines for PD 3080 and PD 3315 provide a one-paragraph description of each SECTION in the drafts and present the names of the individuals whom OCR contacted about provisions of the drafts for information and comment purposes.

This year's TC bill draft will be relatively modest in scale, consisting approximately of 86 SECTIONS. Like the drafts of past years, is made up of SECTIONS falling within two broad categories:

- [1] SECTIONS resolving "conflicts" in the Indiana Code; and
- [2] SECTIONS resolving various other types of technical problems that arose somewhere in the acts of the previous session or that were noticed in the Code and brought to OCR's attention (i.e., everything else besides conflicts).

When OCR refers to a "conflict" in the Indiana Code, we are speaking of a situation in which:

the same existing section of the Indiana Code was being amended differently by two (or sometimes more) acts,
neither act was altered by a Joint Rule 20 motion or a conference committee report so that its SECTION amending the Code section recognized and incorporated the changes being made in the Code section by the other act, and
both acts become law.

When a conflict arises, the Indiana Code ends up containing not one but two versions of the Code section affected by the conflict (or more, if there were more than two conflicting acts). To resolve a conflict, OCR first asks whether there is any substantive conflict between the two versions of the Code section -- any conflict directly involving the *meaning or effect* of the Code section. If a particular conflict is not a substantive conflict, OCR resolves it in the TC bill through a "conflict resolving SECTION" like SECTION 7 on page 9 of PD 3080. (Mr. Mortell distributed a handout explaining in detail how a conflict resolving SECTION of the TC bill merges the differing versions of a Code section so as to eliminate the conflict affecting that Code section.)

The second ("everything else") category of SECTIONS making up the TC bill draft resolve a variety of technical problems *other than* technical conflicts. In PD 3080 and PD 3315, SECTIONS within this category address matters such as incorrect internal references, references to repealed Code sections and other repealed statutes, references to defunct entities and defunct programs, misspellings, verb tense problems, nonstandard tabulation, and missing conjunctions, articles, and prepositions.

Based on guidance it has received from the Commission over the years, OCR does not consider an apparent problem in the second category suitable for resolution in the TC bill draft unless:

- (1) it is clear that there is a mistake or problem of some sort;
- (2) there is only one way in which the mistake or problem can be corrected;
- (3) the one way of correcting the mistake or problem is apparent on the face of the Code section itself (i.e., the Code Revision Commission shouldn't be asked to rely on a someone's word as to what was intended); and
- (4) the proposed correction will not make a substantive change in the law.

OCR receives much information about apparent technical problems from the attorneys of LSA's Office of Bill Drafting and Research, who scrutinize all of the enacted bills after every legislative session. Practicing attorneys and members of the public also contact OCR with information on Code provisions in need of technical correction.

PD 3080 would repeal several Code provisions that have expired by their own terms (i.e., each provision states, "this chapter/section expires" on a certain date, and the date has passed). However, in 2009 IC 1-1-5-10 was added to the Code:

Sec. 10. The expiration of a statute has the same effect that the repeal of the statute, effective on the date of the expiration of the statute, would have had.

In view of the terms of IC 1-1-5-10, John Stieff asked whether the Commission would endorse a change in the way expired Code provisions are dealt with. Instead of expired provisions being removed from the Code by being repealed in the TC bill, LSA, as publisher of the Indiana Code, would merely remove an expired provision from the Code and insert into the Code a statement indicating when the provision expired.

When the Commission assented to this proposed change, Mr. Mortell stated that the drafts would have to be revised somewhat in conformity with the change. At the suggestion of Jon Laramore, the Commission directed Mr. Mortell to prepare, for review at the next Commission meeting, a new 2011 TC bill draft that combines the contents of PD 3080 and PD 3315 and reflects the new way of dealing with expired Code provisions.

VII. DISCUSSION OF NONCODE PROJECT AND DRAFTS

Mr. Bob Rudolph, Senior Staff Attorney, Office of Bill Drafting and Research, presented some numbers related to the noncode project and discussed his approach in classifying the noncode provisions into three categories: (1) provisions to codify and repeal the corresponding noncode (2) provisions to repeal as clearly obsolete; and (3) provisions to preserve in noncode law. Mr. Rudolph noted that the current versions of the noncode drafts contained repealers for each SECTION of noncode being repealed, but that the final version would contain a blanket repealer (as done in past noncode cleanup bills) in Title 1 for all the noncode provisions that are not specifically preserved.

Mr. Rudolph stated that his approach was to codify most everything in the noncode, with the exception of a few provisions that were obvious from the language that the provision was obsolete. Mr. Rudolph noted that obvious repeals included SECTIONS with effective dates that have expired and emergency clauses. Mr. Rudolph stated that the noncode bills are divided into subject matters and presented a table for each bill containing dispositions for each SECTION of noncode that placed the SECTIONS in one of the three categories. Mr. Rudolph noted that roughly 500 budget act provisions were not dealt with in the current noncode drafts (and would be preserved in the noncode) because the staff wanted the fiscal staff and the caucuses to have time to make confident inspections and determinations of the disposition for those provisions, which would be difficult in a budget year session.

Mr. Rudolph discussed the two responses LSA received regarding the noncode project mailing, which was sent to numerous interested parties, attorneys, and agencies in their areas of expertise. The first comments were from Gretchen Gutman, Associate Vice President for Government Relations at Ball State University. Mr. Rudolph explained Ms. Gutman's two suggestions as follows: (1) The university bonding authority is contained in one section of the draft for all universities and she suggested that the specific authority that authorizes a building for a particular institution should be separated into each institutions article in the Code. (2) Section 1 of the draft includes language with validating provisions and she suggested this provision could be placed at a different Code cite. Mr. Rudolph noted that the staff believed Ms. Gutman's first suggestion was a good idea and that the staff would proceed with this change with the Commission's agreement. Mr. Stieff asked the Commission's permission to speak with Ms. Gutman regarding a difference of opinion for suggestion (2).

Ms. Gutman noted her appreciation for the opportunity to comment on the noncode bill drafts. She presented to the Commission an additional option for the university bonding provisions, to exclude them from codification as a part of the budget provisions. Ms. Gutman suggested that the university bonding may not be necessary to include in the Code. Discussion ensued as to the merits of including the bonding provisions in one section or as part of the article for each university with several members agreeing that the method would result in the bonding for each university being easier to find in the Code. Senator Greg Taylor suggested that the bonding provisions should be codified because they are public projects. Senator Mike Delph inquired if there would be more transparency to the public regarding these provisions if they are placed in the Code. Mr. Rudolph stated that the text would be more accessible to the public, but that it is a policy choice whether the provisions should be included or not. Senator Taylor reiterated his comment that for transparency, projects approved by the legislature should be codified. Ms. Gutman noted that the Code would only include the authority to do the project and that the funding for the project would still be

contained in the budget as a noncode provision. Ms. Gutman further noted that legislation for other public construction projects for other public entities generally would not be included in the Code.

The members agreed to have the LSA staff meet with some of the members of the Commission and Ms. Gutman to discuss the issues regarding university bonding and to report back to the Commission.

Mr. Rudolph presented the comments received from the Department of Child Services (DCS) regarding PD 3103. Mr. Stieff noted that the staff agreed with some of the DCS comments and disagreed with others. Mr. Stieff stated agreement with the comments regarding the following SECTIONS of the draft: (1) SECTION 17 has a typo; and (2) SECTIONS 18, 19, and 22 can be repealed as obsolete. The Commission agreed to allow Mr. Stieff to discuss the remaining comments with DCS to come to an agreement for those issues.

Mr. Rudolph presented the noncode draft related to criminal law provisions (PD 3221). He commented that LSA had the practice until recently to include language in the criminal law to indicate that the law applies only prospectively. Mr. Rudolph stated that PD 3221 is codifying many of these provisions from the noncode and sought guidance from the Commission as to whether these provisions should be codified or not. He noted several instances in which the General Assembly included this prospective language to specifically note a change from the general practice. Mr. Rudolph also commented that the staff has some apprehension with regard to the noncode provisions related to the death penalty statutes and relayed his recommendation to leave these noncode provisions alone. Discussion ensued regarding presentation of the criminal law material to the Criminal Code Evaluation Committee. Mr. Jon Laramore commented that the staff should begin to inform attorneys in the criminal law area of expertise as to the approach for the provisions related to prospective application. Ms. Paje Felts, Legislative Council, Indiana State Bar Association, stated that LSA has been in regular contact with the bar association, and the bar association has put information regarding the noncode project on its website and planned several articles related to the noncode project.

VIII. PROPOSED REPEAL OF IC 2-5.5 AND RELOCATION

Mr. Stieff discussed a proposal from the staff to repeal IC 2-5.5 (Temporary Legislative Committees) and move legislation for all committees into IC 2-5. He noted that having two separate articles created a potential for error if a permanent committee was accidentally placed in the temporary article because IC 2-5.5 includes a section stating: "Except as otherwise provided by this article, the chapter that establishes a committee expires January 1 of the second year after the chapter takes effect.", which could result in an unintended termination of a committee. Mr. Stieff stated that one temporary committee in the Code would remain in existence after the next session began, and this committee would be the only one that would need to be moved to IC 2-5. He stated that the repeal would probably be included in the final draft of the noncode project bill.

IX. DISCUSSION OF POPULATION PARAMETERS

Mr. Rudolph explained that population parameters are used to identify political subdivisions in roughly 375 sections of the Indiana Code. He noted that every ten years the Code Revision Commission looks at the parameters and a bill is drafted to update the parameters based on the new census. Mr. Rudolph asked the Commission to consider the issue and whether the staff should draft the update bill following the 2011 session with population parameters or address the political subdivisions by name. The Commission discussed recent case law regarding population parameters, the constitutionality issues with these classifications, and the benefits of classification by population or by name. The Commission decided to place the item on the agenda for the next Code Revision Commission meeting for further discussion.

X. OTHER BUSINESS

The Commission members agreed to hold the next meeting of the Code Revision Commission on October 27, 2010, at 1:30 p.m. in Room 233 of the State House (if available and able to webcast). Senator Holdman thanked the members, staff, and participants present.

XI. ADJOURNMENT

The meeting was adjourned by Senator Holdman at 4:00 p.m.